

FIRST REGULAR SESSION

# SENATE BILL NO. 381

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time January 25, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

0847S.011

## AN ACT

To amend chapter 376, RSMo, by adding thereto seventeen new sections relating to the regulation of health discount plans, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 376, RSMo, is amended by adding thereto seventeen  
2 new sections, to be known as sections 376.1500, 376.1502, 376.1504, 376.1506,  
3 376.1508, 376.1510, 376.1512, 376.1514, 376.1516, 376.1518, 376.1520, 376.1522,  
4 376.1524, 376.1526, 376.1528, 376.1530, and 376.1532, to read as follows:

**376.1500. As used sections 376.1500 to 376.1532, the following  
2 words or phrases mean:**

3 (1) "Director", the director of the department of insurance,  
4 financial and professional regulation;

5 (2) "Direct contract", a contractual arrangement tying the  
6 ultimate seller purporting to offer discounts through the discount card  
7 to the health care provider, which expressly states the intent of this  
8 agreement to be used for the purpose of offering discounts on health-  
9 related purchases to uninsured or non-covered persons;

10 (3) "Discount card", a card or any other purchasing mechanism  
11 or device, which is not insurance, that purports to offer discounts or  
12 access to discounts in health-related purchases from health care  
13 providers;

14 (4) "Discount medical plan", a business arrangement or contract  
15 in which a person, in exchange for fees, dues, charges, or other  
16 consideration, provides access for plan members to providers of  
17 medical services and the right to receive medical services from those  
18 providers at a discount. The term does not include any product  
19 regulated as an insurance product, group health service product or

20 membership in a health maintenance organization in this state or  
21 discounts provided by an insurer, group health service, or health  
22 maintenance organizations where those discounts are provided at no  
23 cost to the insured or member and are offered due to coverage with a  
24 licensed insurer, group health service, or health maintenance  
25 organization;

26 (5) "Discount medical plan organization", a person or an entity  
27 that operates a discount medical plan;

28 (6) "Health care provider", any person or entity licensed by this  
29 state to provide health care services including, but not limited to  
30 physicians, hospitals, home health agencies, pharmacies, and dentists;

31 (7) "Health care provider network", an entity which directly  
32 contracts with physicians and hospitals and has contractual rights to  
33 negotiate on behalf of those health care providers with a discount  
34 medical plan organization to provide medical services to members of  
35 the discount medical plan organization;

36 (8) "Marketer", a person or entity who markets, promotes, sells  
37 or distributes a discount medical plan, including a private label entity  
38 that places its name on and markets or distributes a discount medical  
39 plan but does not operate a discount medical plan;

40 (9) "Medical services", any care, service or treatment of illness or  
41 dysfunction of, or injury to, the human body including, but not limited  
42 to, physician care, inpatient care, hospital surgical services, emergency  
43 services, ambulance services, dental care services, vision care services,  
44 mental health services, substance abuse services, chiropractic services,  
45 podiatric care services, laboratory services, and medical equipment and  
46 supplies. The term does not include pharmaceutical supplies or  
47 prescriptions;

48 (10) "Member", any person who pays fees, dues, charges, or other  
49 consideration for the right to receive the purported benefits of a  
50 discount medical plan; and

51 (11) "Person", an individual, corporation, business trust, estate,  
52 trust, partnership, association, joint venture, limited liability company,  
53 or any other government or commercial entity.

376.1502. It is unlawful to transact business in this state as a  
2 discount medical plan organization, unless the organization is:

3 (1) A corporation, limited liability corporation, partnership,

4 limited liability partnership or other legal entity organized under the  
5 laws of this state or, if a foreign entity, authorized to transact business  
6 in this state; and

7 (2) Registered as a discount medical plan organization with the  
8 director or duly authorized by the director as an insurance company,  
9 licensed health maintenance organization, licensed group health  
10 service organization or third party administrator.

376.1504. 1. To register as a discount medical plan organization,  
2 an applicant shall:

3 (1) File with the director an application on a form approved and  
4 adopted by the director; and

5 (2) Pay to the director an application fee of two hundred fifty  
6 dollars.

7 2. A registration is valid for a one-year term and expires one  
8 year following the registration date unless it is renewed as provided in  
9 this section.

10 3. Before it expires, a registrant may renew the registration for  
11 an additional one-year term if the registrant:

12 (1) Otherwise is qualified to receive a registration;

13 (2) Files with the director a renewal application on a form  
14 approved and adopted by the director; and

15 (3) Pays a renewal fee of two hundred fifty dollars.

16 4. All amounts collected as registration or renewal fees shall be  
17 deposited into the insurance dedicated fund.

18 5. Nothing in this subsection shall require a provider who  
19 provides discounts to his or her own patients to obtain and maintain  
20 a registration as a discount medical plan organization.

376.1506. 1. The director may examine or investigate the  
2 business and affairs of any discount medical plan organization under  
3 the authority of sections 374.190 and 374.202 to 374.207, RSMo. The  
4 director may require any discount medical plan organization or  
5 applicant to produce any records, books, files, advertising and  
6 solicitation materials, or other information and may take statements  
7 under oath to determine whether the discount medical plan  
8 organization or applicant is in violation of the law. The expenses  
9 incurred in conducting any examination shall be paid by the discount  
10 medical plan organization under sections 374.202 to 374.207, RSMo.

11           2. Failure by the discount medical plan organization to pay the  
12 expenses incurred under this subsection shall be grounds for denial or  
13 revocation of the discount medical plan organization's registration.

          376.1508. 1. A discount medical plan organization may charge a  
2 reasonable one-time processing fee and a periodic charge as long as the  
3 fee is disclosed to the applicant.

4           2. If the member cancels the membership within the first thirty  
5 days after receipt of the discount card and other membership materials,  
6 the member shall receive a reimbursement of all periodic charges  
7 paid. The return of all periodic charges shall be made within thirty  
8 days of the date of the cancellation. If all of the periodic charges have  
9 not been paid within thirty days, interest shall be assessed and paid on  
10 the proceeds at a rate of the treasury bill rate of the preceding  
11 calendar year, plus two percentage points.

12           3. The right of cancellation shall be set out in the contract on the  
13 first page, in ten-point type or larger.

14           4. If a discount medical plan charges for a time period in excess  
15 of one month, the plan shall, in the event of cancellation of the  
16 membership by either party, make a pro rata reimbursement of all  
17 periodic charges to the member.

          376.1510. A discount medical plan organization shall not:

2           (1) Use in its advertisements, marketing material, brochures, and  
3 discount cards the terms "insurance", "health plan", "coverage", "copay",  
4 "copayments", "preexisting conditions", "guaranteed issue", "premium",  
5 "PPO", "preferred provider organization", or other terms in a manner  
6 that could reasonably mislead a person to believe that the discount  
7 medical plan is health insurance;

8           (2) Except for hospital services, have restrictions on free access  
9 to plan providers including waiting periods and notification periods;

10           (3) Pay providers any fees for medical services; or

11           (4) Collect or accept money from a member for payment to a  
12 provider for specific medical services furnished or to be furnished to  
13 the member, unless the organization is licensed by the director to act  
14 as an administrator.

          376.1512. 1. The following disclosures, to be printed in not less  
2 than twelve-point type, shall be made in writing to any prospective  
3 member and shall appear on the first page of any advertisements,

4 marketing materials or brochures relating to a discount medical plan:

5 (1) The plan is not insurance;

6 (2) The plan provides discounts with certain health care  
7 providers for medical services;

8 (3) The plan does not make payments directly to the providers  
9 of medical services;

10 (4) The plan member is obligated to pay for all health care  
11 services but will receive a discount from those health care providers  
12 who have contracted with the discount plan organization; and

13 (5) The name and the location of the registered discount medical  
14 plan organization, including the current telephone number of the  
15 registered discount medical plan organization or other entity  
16 responsible for customer service for the plan, if different from the  
17 registered discount medical plan organization.

18 2. If the discount medical plan is sold, marketed, or solicited by  
19 telephone, the disclosures required by this section shall be made orally  
20 and provided in the initial written materials that describe the benefits  
21 under the discount medical plan provided to the prospective or new  
22 member.

376.1514. 1. All providers offering medical services to members  
2 under a discount medical plan shall provide such services pursuant to  
3 a written agreement. The agreement may be entered into directly by  
4 the health care provider or by a health care provider network to which  
5 the provider belongs if the provider network has contracts with the  
6 health care provider that allow the provider network to contract on  
7 behalf of the health care provider.

8 2. A health care provider agreement shall provide the following:

9 (1) A description of the services and products to be provided at  
10 a discount;

11 (2) The amount or amounts of the discounts or, alternatively, a  
12 fee schedule which reflects the health care provider's discounted rates;  
13 and

14 (3) A provision that the health care provider will not charge  
15 members more than the discounted rates.

16 3. A health care provider agreement with a health care provider  
17 network shall require that the health care provider network have  
18 written agreements with its health care providers that:

- 19           **(1) Contain the terms described in this subsection;**  
20           **(2) Authorize the health care provider network to contract with**  
21 **the discount medical plan organization on behalf of the provider; and**  
22           **(3) Require the network to maintain an up-to-date list of its**  
23 **contracted health care providers and to provide that list on a quarterly**  
24 **basis to the discount medical plan organization.**
- 25           **4. The discount medical plan organization shall maintain a copy**  
26 **of each active health care provider agreement into which it has**  
27 **entered.**

**376.1516. 1. Each benefit under the discount medical plan and**  
2 **every disclosure required under sections 376.1500 to 376.1532, shall be**  
3 **included in a written agreement between the discount medical plan**  
4 **organization and the member.**

5           **2. All forms used, including the written agreement pursuant to**  
6 **this section, shall be filed with the director prior to any sale, marketing**  
7 **or advertising of the discount medical plan in this state. Every form**  
8 **filed shall be identified by a unique form number placed in the lower**  
9 **left corner of each form. A filing fee of twenty-five dollars per form**  
10 **shall be payable to the director for deposit into the insurance dedicated**  
11 **fund.**

**376.1518. 1. Each discount medical plan organization registered**  
2 **pursuant to sections 376.1500 to 376.1532, except an affiliate shall, at all**  
3 **times, maintain a net worth of at least one hundred fifty thousand**  
4 **dollars.**

5           **2. The director may not allow a registration unless the discount**  
6 **medical plan organization has a net worth of at least one hundred fifty**  
7 **thousand dollars.**

**376.1520. Each discount medical plan organization required to**  
2 **be registered pursuant to this section shall provide the director at least**  
3 **thirty days' advance notice of any change in the discount medical plan**  
4 **organization's name, address, principal business address, or mailing**  
5 **address.**

**376.1522. Each discount medical plan organization shall maintain**  
2 **a current list of the names and addresses of the providers with which**  
3 **it has contracted on a web site page, the address of which shall be**  
4 **prominently displayed on all its advertisements, marketing materials,**  
5 **brochures, and discount cards. This section applies to those providers**

6 with whom the discount medical plan organization has contracted  
7 directly, as well as those who are members of a provider network with  
8 which the discount medical plan organization has contracted.

376.1524. 1. All advertisements, marketing materials, brochures  
2 and discount cards used by marketers shall be approved in writing for  
3 such use by the discount medical plan organization.

4 2. The discount medical plan organization shall have an executed  
5 written agreement with a marketer prior to the marketer's marketing,  
6 promoting, selling, or distributing the discount medical plan.

376.1526. 1. A discount medical plan organization required to be  
2 registered pursuant to sections 376.1500 to 376.1532 shall maintain a  
3 surety bond with the director, having at all times a value of not less  
4 than thirty-five thousand dollars, for use by the director in protecting  
5 plan members.

6 2. No judgment creditor or other claimant of a discount medical  
7 plan organization, other than the director, shall have the right to levy  
8 upon the surety bond held pursuant to the provisions of this  
9 subsection.

376.1528. The director under the provisions of section 374.045,  
2 RSMo, may promulgate rules to administer and interpret the provisions  
3 of sections 376.1500 to 376.1532.

376.1530. 1. The director may deny a registration to an applicant  
2 or refuse to renew, suspend, or revoke the registration of a registrant  
3 if the applicant or registrant, or an officer, director, or employee of the  
4 applicant or registrant:

5 (1) Makes a material misstatement or misrepresentation in an  
6 application for registration;

7 (2) Fraudulently or deceptively obtains or attempts to obtain a  
8 registration for the applicant or registrant or for another;

9 (3) Has advertised, merchandised or attempted to merchandise  
10 its services in such a manner as to misrepresent its services or capacity  
11 for service or has engaged in deceptive, misleading or unfair practices  
12 with respect to advertising or merchandising;

13 (4) In connection with the advertisement, offer, sale or  
14 administration of a health care discount program, makes any untrue  
15 statement of material fact, conceals any material fact, uses any  
16 deception or commits fraud or engages in any dishonest activity;

17           (5) Is not fulfilling its obligations as a discount medical plan  
18 organization;

19           (6) Does not have the minimum net worth as required by sections  
20 376.1500 to 376.1532;

21           (7) Violates any provision of sections 376.1500 to 376.1532, or any  
22 law or regulation of this state relating to insurance or the provision of  
23 medical care; or

24           (8) Continued operation of the organization would be hazardous  
25 to its members.

26           2. If the director has cause to believe that grounds for the  
27 suspension or revocation of a registration exist, the director shall  
28 notify the discount medical plan organization in writing, specifically  
29 stating the grounds for suspension or revocation, and shall provide  
30 opportunity for a hearing on the matter before the director.

31           3. When the registration of a discount medical plan organization  
32 is surrendered or revoked, such organization shall proceed,  
33 immediately following the effective date of the order of revocation, to  
34 wind up its affairs transacted under the registration. The organization  
35 may not engage in any further advertising, solicitation, collecting of  
36 fees, or renewal of contracts.

          376.1532. 1. If the director determines that a person has  
2 engaged, is engaging, or has taken a substantial step toward engaging  
3 in a violation of sections 376.1500 to 376.1532, or a rule adopted or  
4 order issued pursuant thereto, or that a person has materially aided or  
5 is materially aiding an act, practice, omission, or course of business  
6 constituting a violation of sections 376.1500 to 376.1532 or a rule  
7 adopted or order issued pursuant thereto, the director may issue such  
8 administrative orders as authorized under section 374.046, RSMo. A  
9 violation of sections 376.1500 to 376.1532 is a level two violation under  
10 section 374.049, RSMo. The director of insurance may also suspend or  
11 revoke the license or certificate of authority of such person for any  
12 willful violation.

13           2. If the director believes that a person has engaged, is engaging,  
14 or has taken a substantial step toward engaging in a violation of  
15 sections 376.1500 to 376.1532 or a rule adopted or order issued pursuant  
16 thereto, or that a person has materially aided or is materially aiding an  
17 act, practice, omission or course of business constituting a violation of

18 sections 376.1500 to 376.1532 or a rule adopted or order issued pursuant  
19 thereto, the director may maintain a civil action for relief authorized  
20 under section 374.048, RSMo. A violation of sections 376.1500 to  
21 376.1532 is a level two violation under section 374.049, RSMo.

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